

SUBJECT: Creating a felony for covert photography of others for a sexual purpose

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Hinojosa, Talton, Garcia, Green, Kitchen
0 nays
4 absent — Dunnam, Keel, Martinez Fischer, Shields

WITNESSES: For — Barry Macha; *Registered but did not testify:* John Bradley; Livia Liu, Dallas County District Attorney's Office
Against — William Harrell, American Civil Liberties Union of Texas

DIGEST: HB 73 would establish a state-jail felony (punishable by 180 days to two years in a state jail and an optional fine of up to \$10,000) for photographing or visually recording another person by videotape or other electronic means without that person's consent and with the intent to arouse or gratify the sexual desire of any person.
This bill would take effect September 1, 2001.

SUPPORTERS SAY: HB 73 is necessary because current law does not allow prosecution of people who videotape others without their consent for a sexual purpose. Laws covering assault, intentional infliction of emotional harm, and public nuisance often do not apply to these cases.
HB 73 would protect Texans against being videotaped or photographed without their consent for someone's sexual gratification. In Wichita Falls, a hospital employee installed a video camera in a bathroom vent and taped a woman changing clothes. In Denison, a tanning salon owner hid a video camera in the wall and taped women tanning nude in private tanning booths. In Richardson, a young woman walked up a flight of stairs at a local mall without realizing that a man below the stairs was videotaping up her skirt. When the women in these cases discovered they had been secretly taped and attempted to press charges, the local district attorneys could not prosecute the perpetrators. In the Denison case, the county attorney turned the case

over to the Texas attorney general, who determined that a void in Texas law prevents prosecution of this type of offense.

HB 73 would not limit anyone's First Amendment right to freedom of expression. The bill would be very restrictive as to what would constitute an offense. It would require both a lack of consent and the intent to arouse or gratify someone's sexual desires. A person still could make a videotape with sexual intent if the people videotaped agreed to it.

HB 73 would require well-defined conditions to be met before a person could be convicted of an offense. Both "consent" and "intent to arouse or gratify the sexual desires of any person" already exist in the Penal Code and have been well-litigated.

OPPONENTS
SAY:

HB 73 is unnecessary because this kind of behavior could be prosecuted under current law as assault, intentional infliction of emotional harm, or a public nuisance. The bill would infringe upon Texans' First Amendment rights to freedom of expression. People should not be prohibited from taking photographs and making videotapes in a public place.

HB 73 would create a vague law that would be difficult to enforce. Determining whether something was intended to arouse anyone's sexual desire would be difficult, because people have different perceptions of such things.

NOTES:

An identical bill, HB 542 by Junell, and a similar bill, HB 265 by Wise, have been considered in public hearings by the House Criminal Jurisprudence Committee and left pending. In addition to creating a state jail felony for the offense described in HB 73, HB 265 would require those convicted of the offense to register as sex offenders.